

**ASSEMBLY BILL**

**No. 268**

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**Introduced by Assembly Member Charles Calderon**

February 5, 2007

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An act to add Section 1350.5 to the Evidence Code, relating to hearsay evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 268, as introduced, Charles Calderon. Hearsay evidence: unavailable declarant.

Existing law provides, in a criminal proceeding charging a serious felony, that evidence of a statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness, and certain other conditions apply. Those conditions include, among other things, that (1) there is clear and convincing evidence that the declarant's unavailability was knowingly caused by, aided by, or solicited by the party against whom the statement is offered for the purpose of preventing the arrest or prosecution of the party and is the result of the death by homicide or the kidnapping of the declarant, and (2) the statement has been memorialized in a tape recording made by a law enforcement official, or in a written statement prepared by a law enforcement official and signed by the declarant and notarized in the presence of the law enforcement official, prior to the death or kidnapping of the declarant.

This bill would provide, in a criminal proceeding charging an act of domestic violence, child abuse, elder abuse, or a prosecution under the Street Terrorism Enforcement and Prevention Act, that evidence of a statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the unavailability

of the declarant was caused by, aided by, solicited by, or procured on behalf of the party against whom the statement is to be used. The bill would provide that a party may be deemed to have caused or procured the absence of the declarant, either directly or indirectly, by the use of threatening or violent conduct directed at the declarant with the intention to dissuade the declarant from appearing or testifying at the hearing, or with knowledge that the conduct is reasonably likely to result in the unavailability of the declarant.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1350.5 is added to the Evidence Code,  
2     to read:  
3     1350.5. (a) In a criminal proceeding charging an act of  
4     domestic violence, child abuse, elder abuse, or a prosecution under  
5     the Street Terrorism Enforcement and Prevention Act (Chapter 11  
6     (commencing with Section 186.20) of Title 7 of Part 1 of the Penal  
7     Code), evidence of a statement made by a declarant is not made  
8     inadmissible by the hearsay rule if the declarant is unavailable as  
9     a witness and the unavailability of the declarant was caused by,  
10    aided by, solicited by, or procured on behalf of the party against  
11    whom the statement is to be used.  
12    (b) A party may be deemed to have caused or procured the  
13    absence of the declarant, either directly or indirectly, by the use  
14    of threatening or violent conduct directed at the declarant with the  
15    intention to dissuade the declarant from appearing or testifying at  
16    the hearing, or with knowledge that the conduct is reasonably likely  
17    to result in the unavailability of the declarant.  
18    (c) In a hearing to establish the unavailability of a declarant  
19    under this section, hearsay statements of the declarant are not  
20    inadmissible to prove the cause of the declarant's unavailability.  
21    The court may determine the cause of the unavailability by a  
22    preponderance of the evidence.

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